to me that the defendant relied on the following grounds to support their application that the ex parte injunction be dissolved. First, on a procedural point, it was contended that the supporting affidavit of Tan (encl 3) was affirmed a day before the writ and the summons in chambers were filed. Counsel submitted that this was fatal to the plaintiff's application. On the authorities, it is clear that affidavits should be sworn after the writ is issued. But, where the affidavit had been sworn before the issue of the writ, an order could be made on the plaintiff's undertaking to have it resworn and filed (*Green* v *Prior*[2]); see 1985 *Supreme Court Practice* O 29/1/16, p 462. In fact, this irregularity can now be rectified by Tan reswearing his affidavit and filing it in court.

Secondly, counsel submitted that there was non disclosure of material facts by the plaintiff which would have affected the granting of the ex parte injunction. The defendant alleged that the plaintiff failed to disclose or at least has misled the court regarding the alleged forced re-entry of the said premises by the defendant's servants or agents. The defendant contended that the re-entry was proper, peaceful and it was made according to law. In this connection, counsel also submitted that the plaintiff could not remain on the said premises after the expiry of the tenancy after it was lawfully terminated and in the light of *Khoo Kongsi's* case,[3] the plaintiff could not rely on ss 7 and 8 of the Specific Relief Act 1950.

Finally, counsel submitted that the plaintiff could not rely on the purported oral representation made by the defendant's agent, Mr Charles Chow regarding a five-year tenancy to be renewed year to year to contradict the express written terms of the said agreement giving the plaintiff only a one-year tenancy without any option to renew.

Upon a proper consideration of the matter, I find there was no suppression of material facts as alleged by the defendant. I accept the affidavit of Tan which clearly explained the whole situation and provided reasons in support of the plaintiff's application. On the whole I find no sufficiently cogent grounds for the present injunction to be discharged. In arriving at this conclusion, I am guided by the principles enunciated by Lord Diplock in *American Cyanamid Co* v *Ethicon Ltd*[4] which established that the court must be satisfied that the plaintiff's claim was not frivolous or vexatious; in other words that there was a serious issue to be tried. In the present case, there is a serious question to be tried regarding the tenancy of the said premises. The plaintiff claimed that as a result of oral representations made by Mr Chow, the plaintiff acted upon them in signing the said tenancy agreement. In essence, this allegation raises an interesting point of law on a collateral contract. Secondly, I find the balance of convenience lay in favour of the interim injunction remaining in force. If the plaintiff were successful there would be difficulty in putting his business, including getting the horses and ponies and other paraphernalia into the said premises again. Moreover, there would be difficulty in quantifying the loss suffered by the plaintiff. In fact, the status quo will be preserved by the continuation of the injunction. On the other hand, there should be no difficulty in quantifying the defendant's loss if they were successful. There was no suggestion that the defendant would require the said premises for their immediate use.

For the above reasons, I disallow the defendant's application with costs and order the injunction to remain until final disposal of the suit. However, in the interest of both parties, I make an order for an early trial of the said suit as soon as the pleadings are closed.

Application dismissed.

Solicitors: *Presgrave & Matthews*; *Tan Beng Hong & Co.*

Reported by *Ng Sheau Jiuan*

Penerbit Fajar Bakti Sdn Bhd v Cahaya Surya Buku dan Alat Tulis

HIGH COURT (KUALA LUMPUR) – CIVIL SUIT NO C22-40 OF 1986
VC GEORGE J
15 APRIL 1987

Copyright – Collection of short stories and poems – Copyright to – Existence of

Copyright – Anton Piller order – Application for in copyright infringement cases – Successful trap purchase exercise and prima facie evidence of copyright ownership sufficient to justify court granting Anton Piller order

Civil Procedure – Anton Piller order – Application for in copyright infringement cases – Successful trap purchase exercise and prima facie evidence of copyright ownership sufficient to justify court granting Anton Piller order

The plaintiffs had earlier obtained an Anton Piller order against the defendants. In their supporting affidavit, the plaintiffs contended that the defendants had infringed the plaintiffs' copyright in two books by publishing, distributing, exhibiting and selling infringed copies of the two books. The plaintiffs also contended that they had the copyright in the books because the persons who had collected, selected and arranged the short stories in the one and poems in the other of those two books had duly assigned their copyright to the plaintiffs.

The defendants applied to have the Anton Piller order dissolved and sought an order for damages. They submitted that the plaintiffs had no copyright in either of the works and that it was the actual authors of the stories and poems that had the copyright in them.

Held, dismissing the defendants' application:

(1) The plaintiffs are not claiming copyright to the individual stories or poems but to the collection or anthologies. Both in principle and on authority, whoever compiled each of the two books can enjoy the copyright in the books which they have assigned to the plaintiffs.

(2) In a copyright infringement complaint, suspicion followed by a successful trap purchase exercise supported by prima facie evidence of ownership in the copyright is sufficient to justify asking for and being given an Anton Piller order.

[*Editorial Note*: The defendants appealed to the Supreme Court vide Civil Appeal No 177 of 1987. The appeal was heard on 20 June 1988 and the court (comprising Mohamed Azmi, Abdoolcader and Wan Hamzah SCJJ) dismissed the appeal. No written judgment was given.]

Case referred to

1 *MacMillan & Anor* v *Suresh Chunder Deb* (1890) 17 ILR (Calcutta Series) 951 (folld)

SF Wong and *David Morais* for the plaintiffs.
MS Murthi for the defendants.

Cur Adv Vult

VC George J: The plaintiffs had by an ex parte application obtained an Anton Piller order. They had contended in a supporting affidavit, inter alia, that:

(1) the books entitled *Suatu Subuh Yang Bening* and *Siri Sastra Fajar Bakti Bahasa Alam* are literary works;
(2) that the plaintiffs had the copyright in respect of each of the books which were anthologies in that the persons who had collected, selected and arranged the short stories in the one and the poems in the other of those two books had copyright in the respective books which copyright had been duly assigned to the plaintiffs;
(3) that the plaintiffs had published both the books; and
(4) the defendants have infringed the plaintiffs' copyright in both the works by publishing, distributing, exhibiting and selling infringed copies of each of the said two works.

To obtain prima facie evidence of the said last allegation the plaintiffs successfully arranged a trap purchase. On 26 December 1985 their agent, one Hassan bin Haji Abu, purchased at the defendants' shop at No 298, Jalan Besar Banting, Selangor, infringing copies of each of the books which offending copies were produced in court. Encik Hassan in his affidavit says that although he purchased the books at the defendants' bookshop, when he asked for a receipt the defendants' servant or agent who sold him the books explained that he could not provide a receipt in the defendants' note paper. At para 4 of his affidavit, encl 3, Encik Hassan says:

> I asked for a receipt, and the man issued me a receipt on Syarikat Ridzwana note paper and said that Cahaya Surya was only about a month old and he had no note paper. So he used the note paper of Syarikat Ridzwana which belonged to the same person.

On execution of the Anton Piller order, infringing copies of the books were not found. The defendants' managing director in his affidavit, encl 16, says that it was only after their solicitors had executed the Anton Piller order that they learnt that the defendants kept their stock at an address not known to the plaintiffs when the Anton Piller order was sought and obtained.

The defendants applied by encl 11 to have the Anton Piller order dissolved and sought an order for damages suffered by the defendants as a result thereof to be assessed and paid.

Counsel for the defendants contended that in fact the plaintiffs had no copyright in either of the works. He says that it was the actual authors of the stories and poems that had the copyright in them and that there was no evidence that they had assigned their intellectual property in their work to the plaintiffs.

The answer to that contention is that the plaintiffs are not claiming copyright to the individual stories or poems but to the collection or anthologies.

Macmillan & Anor v *Suresh Chunder Deb*[1] at p 961 refers to that famous anthology of poems called the *Golden Treasury of Songs and Lyrics* selected by one Prof Palgrave and held that such a selection could be the subject of copyright. I held, both in principle and on authority, that the person or persons who compiled each of the two books, the subject of this action, could enjoy the copyright in the books which they have assigned to the plaintiffs.

As to the trap purchase, all that counsel for the defendants could advance was that the receipt was not in the name of the defendants. However, that has been explained, as has been seen, by Encik Hassan. It is significant that there is no explanation from the defendants as to how their salesman in their shop came to sell infringing copies of the very anthologies.

In my view in a copyright infringement complaint, suspicion followed by a successful trap purchase exercise supported by prima facie evidence of ownership in the copyright is sufficient to justify asking for and being given an Anton Piller order.

The defendants' application, encl 11, to set aside the Anton Piller order and for consequential orders was dismissed with costs.

Application dismissed.

Solicitors: *Shearn Delamore & Co*; *Murthi & Partners*.

Reported by *Ng Sheau Jiuan*